

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK02-43406
)	
DARRYL E. HOWARD and)	
RONDA HOWARD,)	
)	CH. 11
Debtor(s).)	
)	Filing No. 409, 412, 415

ORDER

At Filing No. 409, creditor Deere Credit, Inc., and Prudential Insurance Company of America filed a joint resistance to the debtor's motion to convert Chapter 11 bankruptcy proceeding to Chapter 12. They included in the joint resistance a request for an order vacating the stay pending appeal. Separately, at Filing No. 412, the same creditors filed a joint motion to vacate the stay pending appeal.

At Filing No. 415, the debtors filed a document entitled "Motion to Dismiss/Withdraw Document Debtor/Farmers' Motion to Dismiss the Pleading filed by Prudential and Deere Credit, Which are Contrary to the Bankruptcy Code." This motion asserts that the creditors cannot join a resistance to the motion to convert and their own motion to vacate the stay in the same document. Such motion is directed at Filing No. 409, but appears to ignore Filing No. 412.

The court shall deem as moot that portion of the objection to the motion to convert, Filing No. 409, which addresses the motion to vacate the stay pending appeal. With regard to Filing No. 412 and 415, they are both denied. The appeal is pending before the district court, and this court has no jurisdiction to deal with the matters pending on appeal. Even if this court does have jurisdiction to vacate the stay pending appeal, this court's authority to do so is subject to an exercise of discretion. Exercising such discretion, I decline to vacate the stay pending appeal. If the creditors are being harmed by the stay pending appeal, they may bring that matter to the attention of the district court and request that court to give them relief, either in the form of an order affirming the dismissal, or in the form of an order vacating the stay or modifying it to protect their interest.

This matter has been scheduled for hearing on March 29, 2006. That hearing is cancelled. Oral argument is not needed.

SO ORDERED.

DATED this 8th day of March 2006.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

William L. Needler
*Michael J. Whaley
*Mary Swick
U.S. Trustee

Movant(*) is responsible for giving notice to all other parties not listed above if required by rule or statute.